



Pg 1 of 27
**LAW OFFICES OF
FORMAN, CARDONSKY & TSINMAN**

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LOUIS L. FORMAN (1929-1996)

SAMUEL TSINMAN
JUAN C. CERVANTES

OF COUNSEL

ROBERT J. CARDONSKY**
PATRICIA A. EIGES
BHAVINI TARA SHAH

* CERTIFIED by the SUPREME
COURT of NEW JERSEY as a
CIVIL TRIAL ATTORNEY
*ALSO MEMBER of N.Y. BAR

February 15, 2019

Via Fed-Ex Overnight

Clerk, United States Bankruptcy Court
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

RE: Sears Holdings Corporation
Case No.: 18-23538
Docket No.: UNN-L-1270-17
Our File No. 31267

Dear Sir/Madam:

With regard to the above matter, please find enclosed original and copy of the a Notice of Motion to Vacate Automatic Stay, Certification of Service, Attorney Certification and Order. Kindly mark "Filed" and return in the self-addressed stamped envelope provided.

If you have any questions, please contact the undersigned.

Very truly yours,
FORMAN, CARDONSKY & TSINMAN, LLC.

/s/Juan Cervantes

Juan Cervantes, Esq.

JC/sd

Enclosure.

C: Sears Holdings Corporation. (certified mail/rrr and rm)
Weil, Gotshal & Manges, LLP (certified mail/rrr and rm)
Office of the United States Trustee for Region 2 (certified mail/rrr and rm)
Sisselman & Schwartz, LLP (certified mail/rrr and rm)
Jardim, Meisner & Susser, PC (certified mail/rrr and rm)
Bardsley, Benedict & Cholden, LLP (certified mail/rrr and rm)
Skadeen, Arps, Slate, Meagher & Flom, LLP (certified mail/rrr and rm)
David Polk & Wardell, LLP (certified mail/rrr and rm)

(continued...)

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February 14, 2019

Cleary, Gottlieb (certified mail/rrr and rm)
Kelley Drye & Warren, LLP (certified mail/rrr and rm)
Seyfarth Shaw, LLP (certified mail/rrr and rm)
Carter Ledyard & Millburn, LLP (certified mail/rrr and rm)
Locke Lord, LLP (certified mail/rrr and rm)
Akin Gump Strauss Hauer & Fild, LLP (certified mail/rrr and rm)

JUAN C. CERVANTES, ESQ. (214042017)
FORMAN, CARDONSKY & TSINMAN, ESQS.
701 Westfield Avenue
Elizabeth, New Jersey 07208
(908) 353-6500
Attorneys for Creditor, Rosa Melgar

IN RE:

SEARS HOLDINGS CORPORATION

DEBTOR

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS DIVISION

CHAPTER 11
CASE NO. 18-23538 (RDD)

NOTICE OF MOTION FOR RELIEF FROM
THE AUTOMATIC STAY

TO: Honorable Judge Robert D. Drain
United States Bankruptcy Court Southern District of New York
300 Quarropas Street, Room 248
White Plains, New York 10601

Stephen Sitley, Esq.
Luke J. Valentino, Esq.
Sears Holdings Corporation
3333 Beverly Road
Hoffman Estates, IL, 60179

Ray C. Schrock, P.C.
Jacqueline Marcus, Esq.
Garret A. Fail, Esq.
Sunny Singh, Esq.
Weil, Gotshal & Manges, LLP
767 Fifth Ave
New York, NY 10153

Paul Schwartzberg, Esq.
Office of the United States Trustee for Region 2
201 Varick Street, Suite 1006
New York, NY 10014

Douglass S. Schwartz, Esq.
Sisselman & Schwartz, LLP
75 Livingston Ave, Suite 302
Roseland, NJ 07068
Attorneys for Sears of Woodbridge in
Personal Injury Matter, UNN-L-1270-17

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Attorneys for ICON Health & Fitness, Inc.
Personal Injury Matter, UNN-L-1270-17

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Personal Injury Matter, UNN-L-1270-17

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George Howard, Esq.
Skadden, Arps, Slate, Meagher & Flom, LL
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New York, NY 10036
Attorneys for Bank of America, N.A., Administrative agent under the First Lien Credit Facility
and the DIP ABL Agent

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Eli J. Vonnegut, Esq.
Davis Polk & Wardell, LLP
450 Lexington Ave
New York, BY 10017
Attorneys for Citibank, N.A., as administrative agent under the Stand-Alone L/C Facility

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Cleary, Gottlieb
One Liberty Plaza
New York, NY 10006
Attorneys for JPP, LLC., as agent under the Second Lien Credit Facility, IP/Ground Lease
Term Loan Facility and the Consolidated Secured Loan Facility.

Eric R. Wilson, Esq
Benjamin D. Feder, Esq.
T. Charle Liu, Esq.
Kelley Drye & Warren, LLP
101 Park Ave
New York, NY 10178
Attorneys for Computershare Trust Company, N.A., as trustee for the Second Lien PIK Notes,
the Holdings Unsecured PIK Notes, and the Holdings Unsecured Notes.

Edward M. Fox, Esq.
Seyfarth Shaw, LLP
620 Eighth Ave
New York, NY 10018

Attorneys for Wilmington Trust, National Association as indenture trustee for the Second Lien Notes.

James Gadsden, Esq.
Carter Ledyard & Millburn, LLP
2 Wall Street
New York, NY 10015

Attorneys for The Bank of New York Mellon Trust Company, as successor trustee for the SRAC Unsecured PIK Notes, SRAC Unsecured Notes and the SRAC Medium Term Notes.

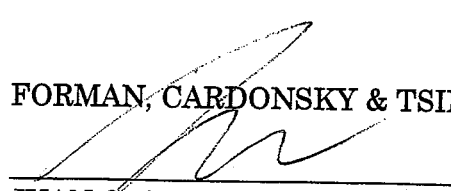
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111 South Wacker Drive
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Attorneys for the Pension Benefit Guaranty Corporation

Philip C. Dublin, Esq.
Ira Dizengoff, Esq.
Sara Lynne Brauner, Esq.
Akin Gump Strauss Hauer & Fild, LLP
One Bryant Park
New York, NY 10036
Attorneys for the Official Committee of Unsecured Creditors (The Creditors Committee)

PLEASE TAKE NOTICE that on Thursday, March 21, 2019 at 10:00 a.m., or as soon as counsel may be heard, the undersigned, attorney for Rosa Melgar, will move before the United States Bankruptcy Court Honorable Robert D. Drain, presiding, U.S. Bankruptcy Court, 300 Quarropas Street, White Plains, New York, 10601, for an Order Vacating the Automatic Stay filed with regard to the Complaint filed in the Superior Court of New Jersey Law Division Union County under Docket Number UNN-L-1270-17.

TAKE FURTHER NOTICE that the facts relied upon as set forth in the accompanying attorney certification and the basis for relief from the automatic stay, do not present complicated questions of fact or unique questions of law, it is hereby submitted that no brief is necessary in the Courts consideration of the within Motion.

FORMAN, CARDONSKY & TSINMAN, ESQS.


JUAN C. CERVANTES, ESQ

DATED: 02/15/2019

JUAN C. CERVANTES, ESQ. (214042017)
FORMAN, CARDONSKY & TSINMAN, ESQS.
701 Westfield Avenue
Elizabeth, New Jersey 07208
(908) 353-6500
Attorneys for Creditor, Rosa Melgar

IN RE:

SEARS HOLDINGS CORPORATION

DEBTOR

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS DIVISION

CHAPTER 11
CASE NO. 18-23538 (RDD)

ATTORNEY'S CERTIFICATION

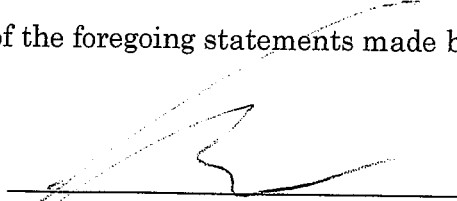
I, Juan C. Cervantes, Esq., of full age, hereby certify as follows:

1. I am an Attorney of Counsel with the law firm of Forman, Cardonsky & Tsinman. LLC., and have been actively engaged in handling the above entitled matter on behalf of the Plaintiff.
2. The Complaint filed on behalf of the Plaintiff, Rosa Melgar, in this action involves a claim of negligence against the Defendant, Sears, located at 150 Woodbridge Center Drive, in the City of Woodbridge, County of Middlesex and State of New Jersey, with regard to the manner in which they owned, operated, controlled, maintained and assembled an elliptical machine that was on display on April 02, 2015, at which time the Plaintiff was caused to fall suffering personal injuries.
3. The Complaint was filed on behalf of the Plaintiff on April 03, 2015 in the Superior Court of New Jersey Law Division Union County under Docket Number UNN-L-1270-17. See attached copy of filed Complaint (Exhibit A)
4. Defendant/ Debtor, Sears of Woodbridge filed an Answer to Plaintiff's Amended Complaint on November 17, 2017 and is represented by the law firm of Sisselman & Schwartz, LLP. Defendant Sears brought in Defendant ICON and Out of the Box indicating that they were contracted to put the exercise equipment together. Numerous depositions have been taken.

5. On October, 15, 2018, the Defendant/ Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with this Court and Orders for Relief were entered. On November 21, 2018, the Defendant/ Debtor filed a Notice of Bankruptcy Filing and Imposition of Automatic Stay in the State Court Action.
6. On December 10, 2018, Plaintiff filed Proof of Claim which has been docketed at Claim #6110. Copy of Proof of Claim and receipt is attached herein. (Exhibit B)
7. Plaintiff is filing this motion for relief from the automatic stay entered into the underlying civil proceeding.
8. Plaintiff's claim is only seeking proceeds from Defendant, Sears of Woodbridge, insurance policies that cover liability.
9. Upon information and belief, Defendant, ICON Health and Fitness, Inc. and/or Out of the Box, name Sears Corporation as an additional insured on the policy of insurance of not less than \$5 million, covering ICON Health and Fitness, Inc., and/or Out of the Box, on a primary, non-contributory basis. Sears has no applicable liability insurance of its own for this claim. It is self-insured up to \$5 million
10. Although the Debtor, Sears was "self insured" for purposes of personal injury claims, its contractors, "ICON Health and Fitness, Inc.," and "Out of the Box," and its policies cover the Debtor as an additional insured.
11. Plaintiff is willing to enter into a stipulation and/or agreement that she will only pursue the proceeds of any applicable insurance policies/ self-insurance funds, without pursuing Debtor's other assets.
12. In addition, the relative size of Plaintiff's personal injury claim is small compared to the overall assets of Sear's Corporation.
13. Because of the fact it is a claim for insurance proceeds and because of the size of the claim in comparison to Sears' assets, Plaintiff's claim can continue without disrupting the bankruptcy proceedings.

14. Based upon all of the above, it is respectfully requested that the Court enter an Order granting Plaintiff Relief from the Automatic Stay.

I hereby certify that the foregoing statements made by me are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



JUAN C. CERVANTES, ESQ.

DATED: 02/15/2019

JUAN C. CERVANTES, ESQ. (214042017)
FORMAN, CARDONSKY & TSINMAN, ESQS.
701 Westfield Avenue
Elizabeth, New Jersey 07208
(908) 353-6500
Attorneys for Creditor, Rosa Melgar

IN RE:

SEARS HOLDINGS CORPORATION

DEBTOR

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS DIVISION

CHAPTER 11
CASE NO. 18-23538 (RDD)

CERTIFICATION OF MAILING

I, Stephanie Diaz, Legal Secretary for the law firm of Forman, Cardonsky & Tsinman, hereby certify that on today's date, February 14, 2019, I forwarded the original of the within Notice of Motion, supporting Certification and proposed Order form via certified and regular mail:

Honorable Judge Robert D. Drain
United States Bankruptcy Court Southern District of New York
300 Quarropas Street, Room 248
White Plains, New York 10601

Stephen Sitley, Esq.
Luke J. Valentino, Esq.
Sears Holdings Corporation
3333 Beverly Road
Hoffman Estates, IL, 60179

Ray C. Schrock, P.C.
Jacqueline Marcus, Esq.
Garret A. Fail, Esq.
Sunny Singh, Esq.
Weil, Gotshal & Manges, LLP
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New York, NY 10153

Paul Schwartzberg, Esq.
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Sisselman & Schwartz, LLP
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Roseland, NJ 07068

Attorneys for Sears of Woodbridge in
Personal Injury Matter, UNN-L-1270-17

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Jardim, Meisner & Susser, PC
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Florham Park, NJ 07932
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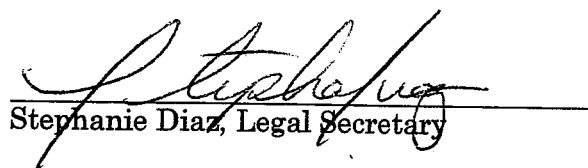
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Philip C. Dublin, Esq.
Ira Dizengoff, Esq.
Sara Lynne Brauner, Esq.
Akin Gump Strauss Hauer & Fild, LLP
One Bryant Park
New York, NY 10036
Attorneys for the Official Committee of Unsecured Creditors (The Creditors Committee)

I hereby certify that the statements herein made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.


Stephanie Diaz, Legal Secretary

Date:02/15/2019

JUAN C. CERVANTES, ESQ. (214042017)
FORMAN, CARDONSKY & TSINMAN, ESQS.
701 Westfield Avenue
Elizabeth, New Jersey 07208
(908) 353-6500
Attorneys for Creditor, Rosa Melgar

IN RE:

SEARS HOLDINGS CORPORATION

DEBTOR

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS DIVISION

CHAPTER 11
CASE NO. 18-23538 (RDD)

ORDER FOR RELIEF FROM THE
AUTOMATIC STAY

This matter having come before the Court on application of Forman, Cardonsky & Tsinman, LLC., attorneys for Rosa Melgar, upon notice to all interested parties, the Court having considered the moving papers, any opposition hereto and for good cause shown,

It is on this _____ day of _____, 2019,

ORDERED that the Plaintiff's motion to for Relief from the Automatic stay is hereby **GRANTED** and;

FURTHER ORDERED that the Plaintiff is permitted to proceed in the underlying civil matter and;

FURTHER ORDERED that a copy of this Order is to be served on all parties within _____ days of the date of this Order.

___ Opposed; ___ Unopposed

, J.S.C.

EXHIBIT A

SAMUEL TSINMAN, ESQ. (008292011)
FORMAN, CARDONSKY & LAWRENCE, ESQS.
701 Westfield Avenue
Elizabeth, New Jersey 07208
(908) 353-6500
Attorney for Plaintiff(s), Rosa Melgar

ROSA MELGAR,

Plaintiff

vs.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
- UNION COUNTY

DOCKET NO.: UNN-L-1270-17

SEARS of WOODBRIDGE, "OUT OF THE
BOX" AND ICON HEALTH AND
FITNESS INC and/ or ABC CORP. 1-10
fictitious names whose actual identities are
unknown to Plaintiff at this time.
Defendants

Civil Action

FIRST AMENDED COMPLAINT AND
JURY DEMAND; DESIGNATION OF
TRIAL ATTORNEY; DEMAND FOR
ANSWERS TO INTERROGATORIES

Plaintiff, ROSA MELGAR, residing at 70 Marshall Street, in the City of Elizabeth, County of Union and State of New Jersey, by way of Complaint against the Defendants herein says:

COUNT I

1. On or about April 02, 2015 the Plaintiff, ROSA MELGAR, was a lawful invitee upon the commercial premises located at 150 Woodbridge Center Drive, in the City of Woodbridge, County of Middlesex and State of New Jersey, owned, operated, maintained, repaired, and controlled by the Defendants, SEARS of WOODBRIDGE, "OUT OF THE BOX" AND ICON HEALTH AND FITNESS INC and/ or ABC CORP. 1-10 fictitious names whose actual identities are unknown to Plaintiff at this time.

2. At the aforesaid time and place and as a direct and proximate result of the negligent and improper manner in which the Defendants, through their agents, servants and/or employees, controlled, negligently and/or improperly assembled, maintained, controlled an elliptical machine, allowing it to be used by the public, the Plaintiff was caused to fall to the ground.

3. As a direct and proximate result of the negligent actions of the Defendants, as aforesaid, the Plaintiff, ROSA MELGAR, was caused to suffer serious injuries in and about her head, limbs and body; she was caused to incur pain and suffering and will in the future be caused to incur pain and suffering; she was caused to incur medical expenses and will in the future be caused to incur medical expenses; she was caused to lose time from her usual pursuits and occupations and will in the future be caused to lose time from her usual pursuits and occupations; she was caused to incur permanent injuries.

WHEREFORE, Plaintiff, ROSA MELGAR, demands judgment against the Defendants, SEARS of WOODBRIDGE, "OUT OF THE BOX" AND ICON HEALTH AND FITNESS INC and/ or ABC CORP. 1-10 fictitious names whose actual identities are unknown to Plaintiff at this time.
, for damages, together with interest and costs of suit.

JURY DEMAND

PLEASE TAKE NOTICE that the Plaintiff hereby demands a trial by jury on all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Samuel Tsinman, Esq., is hereby designated as trial counsel of the within matter.

FORMAN & CARDONSKY, ESQS.

By: 

SAMUEL TSINMAN, ESQ

DATED: 10-11-17

CERTIFICATION

Pursuant to the requirements of Rule 4:5-1, I the undersigned, do hereby certify to the best of my knowledge, information and belief, that except as hereinafter indicated, the subject matter of the controversy referred to in the within pleading is not the subject of any other Causes of Action, pending

in any other Court, or of a pending Arbitration Proceeding, nor is any other Cause of Action or Arbitration Proceeding contemplated.

1. OTHER ACTIONS PENDING? YES ☐ NO ☒
A. If YES – Parties to other Pending Actions.
B. In my opinion, the following parties should be joined in the within pending Cause of Action.
2. OTHER ACTIONS CONTEMPLATED? YES ☐ NO ☒
A. If YES – Parties contemplated to be joined, in other Causes of Action.
3. ARBITRATION PROCEEDINGS PENDING? YES ☐ NO ☒
A. If YES – Parties to Arbitration Proceedings.
B. In my opinion, the following parties should be joined in the pending Arbitration Proceedings.
4. OTHER ARBITRATION PROCEEDINGS CONTEMPLATED? YES ☐ NO ☒
A. If YES – Parties contemplated to be joined to Arbitration Proceedings.

In the event that during the pendency of the within Cause of Action, I shall become aware of any changes as to any facts stated herein, I shall file an amended certification and serve a copy thereof on all other parties (or their attorneys) who have appeared in said Cause of Action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

FORMAN & CARDONSKY, ESQS.

By: 

SAMUEL TSINMAN, ESQ

DATED: 10-11-17

DEMAND FOR ANSWERS TO INTERROGATORIES

Demand is hereby made on the Defendants to answer fully and responsively Form C and Form C(1) Uniform Interrogatories, Superior Court found in Appendix II as provided by R.4:17-1(b)(ii) and other applicable Rules of Court.

DEMAND FOR DISCOVERY OF INSURANCE CARRIER

Pursuant to R.4:10-2(b), demand is hereby made that Defendants disclose to Plaintiff's attorney, whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment and provide Plaintiff's attorney with true copies of such insurance agreements or policies including, but not limited to, any and all declaration sheets. This demand shall be deemed to include and cover not only primary coverage but also any and all excess catastrophe and umbrella policies.

NOTICE TO PRODUCE

1. Any and all photographs, diagrams, videotapes, x-rays, medical records or test results, relating to this incident and the injuries resulting therefrom;
2. Any and all reports of experts on the issue of liability or damages, whether or not previously provided to parties to this action;
3. Copies of any and all discovery materials, including but not limited to, answers to interrogatories and deposition transcripts of any parties to this action;
4. Any and all documents, papers and writings that you will rely on at the time of trial or which you deem relevant to this action;

5. Any and all reports in your possession regarding any prior litigation concerning defendants' professional liability, including but not limited to reports concerning prior lawsuits and/or claims, and listings of prior insurance claims;

6. Any document or items of physical evidence upon which you intend to rely in cross-examination of any witness;

7. Any and all documents relied upon or reviewed by any expert who has rendered a report;

8. Any and all incident reports and/or written memorandum prepared by the defendant or its agents, servants or employees during the course of its business in any way related to the incident in question.

PLEASE TAKE FURTHER NOTICE that this is a continuing demand and shall apply to all materials, which may come into your possession or under your control up through and including the time of trial.

FORMAN & CARDONSKY, ESQS.

By: 
SAMUEL TSINMAN, ESQ.

DATED: 10-11-17

EXHIBIT B

Fill in this information to identify the case:

Debtor 1 Sears Holdings Corporation
Debtor 2 _____
(Spouse, if filing) _____
United States Bankruptcy Court Southern District of New York
Case number: 18-23538

FILED
U.S. Bankruptcy Court
Southern District of New York
12/10/2018
Vito Genna, Clerk

Official Form 410
Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Rosa Melgar</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor <u>Patricia A. Eiges, Esq.</u>	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>Rosa Melgar</u> Name <u>701 Westfield Ave</u> <u>Elizabeth, NJ 07208</u>	Where should payments to the creditor be sent? (if different) _____ Name _____ Contact phone _____ Contact email _____ Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____
	Contact phone <u>908-353-6500</u>	Contact phone _____
	Contact email <u>paeiges@formanfirm.com</u>	Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____ MM / DD / YYYY	

Official Form 410

Proof of Claim

page 1

Claim Number: 6110

Part 2: Give Information About the Claim as of the Date the Case Was Filed**6. Do you have any number you use to identify the debtor?**

- ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim?

\$ 120000.00

Does this amount include interest or other charges?

- ☒ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim?

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as healthcare information.

personal injury

9. Is all or part of the claim secured?

- ☒ No
☐ Yes. The claim is secured by a lien on property.

Nature of property:

- ☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: _____

Basis for perfection:

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property:

\$ _____

Amount of the claim that is secured:

\$ _____

Amount of the claim that is unsecured:

\$ _____

(The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition:

\$ _____

Annual Interest Rate (when case was filed)

_____%

- ☐ Fixed
☐ Variable

10. Is this claim based on a lease?

- ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff?

- ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. <i>Check all that apply:</i>	<table border="0" style="width: 100%;"> <tr> <td style="width: 70%;"> A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority. </td> <td style="width: 30%; text-align: right;"> Amount entitled to priority </td> </tr> <tr> <td> <input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). </td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td> <input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). </td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td> <input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). </td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td> <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). </td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td> <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). </td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td> <input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies </td> <td style="text-align: right;">\$ _____</td> </tr> </table>	A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.	Amount entitled to priority	<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____	<input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____	<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____	<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____	<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies	\$ _____
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<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____															
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies	\$ _____															

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157 and 3571.

Check the appropriate box:

- ☐ I am the creditor.
☒ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this Proof of Claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this Proof of Claim and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 12/10/2018
 MM / DD / YYYY

/s/ Patricia A. Eiges, Esq. _____
 Signature

Print the name of the person who is completing and signing this claim:

Name	Patricia A. Eiges, Esq.						
Title	<table border="0" style="width: 100%;"> <tr> <td style="width: 33%;">First name</td> <td style="width: 33%;">Middle name</td> <td style="width: 33%;">Last name</td> </tr> <tr> <td colspan="3">Attorney</td> </tr> </table>	First name	Middle name	Last name	Attorney		
First name	Middle name	Last name					
Attorney							
Company	Forman & Cardonsky						
Address	Identify the corporate servicer as the company if the authorized agent is a servicer 701 Westfield Ave Number Street Elizabeth, NJ 07208 City State ZIP Code						
Contact phone	908-353-6500						
Email	paeiges@formanfirm.com						

SAMUEL TSINMAN, ESQ. (008292011)
FORMAN, CARDONSKY & LAWRENCE, ESQS.
701 Westfield Avenue
Elizabeth, New Jersey 07208
(908) 353-6500
Attorney for Plaintiff(s), Rosa Melgar

ROSA MELGAR,

Plaintiff

vs.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
- UNION COUNTY

DOCKET NO.: UNN-L-1270-17

Civil Action

SEARS of WOODBRIDGE, "OUT OF THE
BOX" AND ICON HEALTH AND
FITNESS INC and/ or ABC CORP. 1-10
fictitious names whose actual identities are
unknown to Plaintiff at this time.
Defendants

FIRST AMENDED COMPLAINT AND
JURY DEMAND; DESIGNATION OF
TRIAL ATTORNEY; DEMAND FOR
ANSWERS TO INTERROGATORIES

Plaintiff, ROSA MELGAR, residing at 70 Marshall Street, in the City of Elizabeth, County of Union and State of New Jersey, by way of Complaint against the Defendants herein says:

COUNT I

1. On or about April 02, 2015 the Plaintiff, ROSA MELGAR, was a lawful invitee upon the commercial premises located at 150 Woodbridge Center Drive, in the City of Woodbridge, County of Middlesex and State of New Jersey, owned, operated, maintained, repaired, and controlled by the Defendants, SEARS of WOODBRIDGE, "OUT OF THE BOX" AND ICON HEALTH AND FITNESS INC and/ or ABC CORP. 1-10 fictitious names whose actual identities are unknown to Plaintiff at this time.

2. At the aforesaid time and place and as a direct and proximate result of the negligent and improper manner in which the Defendants, through their agents, servants and/or employees, controlled, negligently and/or improperly assembled, maintained, controlled an elliptical machine, allowing it to be used by the public, the Plaintiff was caused to fall to the ground.

3. As a direct and proximate result of the negligent actions of the Defendants, as aforesaid, the Plaintiff, ROSA MELGAR, was caused to suffer serious injuries in and about her head, limbs and body; she was caused to incur pain and suffering and will in the future be caused to incur pain and suffering; she was caused to incur medical expenses and will in the future be caused to incur medical expenses; she was caused to lose time from her usual pursuits and occupations and will in the future be caused to lose time from her usual pursuits and occupations; she was caused to incur permanent injuries.

WHEREFORE, Plaintiff, ROSA MELGAR, demands judgment against the Defendants, SEARS of WOODBRIDGE, "OUT OF THE BOX" AND ICON HEALTH AND FITNESS INC and/ or ABC CORP. 1-10 fictitious names whose actual identities are unknown to Plaintiff at this time.

, for damages, together with interest and costs of suit.

JURY DEMAND

PLEASE TAKE NOTICE that the Plaintiff hereby demands a trial by jury on all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Samuel Tsinman, Esq., is hereby designated as trial counsel of the within matter.

FORMAN & CARDONSKY, ESQS.

By: 
SAMUEL TSINMAN, ESQ

DATED: 10-11-17

CERTIFICATION

Pursuant to the requirements of Rule 4:5-1, I the undersigned, do hereby certify to the best of my knowledge, information and belief, that except as hereinafter indicated, the subject matter of the controversy referred to in the within pleading is not the subject of any other Causes of Action, pending

in any other Court, or of a pending Arbitration Proceeding, nor is any other Cause of Action or Arbitration Proceeding contemplated.

1. OTHER ACTIONS PENDING? YES ___ NO X

A. If YES – Parties to other Pending Actions.

B. In my opinion, the following parties should be joined in the within pending Cause of Action.

2. OTHER ACTIONS CONTEMPLATED? YES ___ NO X

A. If YES – Parties contemplated to be joined, in other Causes of Action.

3. ARBITRATION PROCEEDINGS PENDING? YES ___ NO X

A. If YES – Parties to Arbitration Proceedings.

B. In my opinion, the following parties should be joined in the pending Arbitration Proceedings.

4. OTHER ARBITRATION PROCEEDINGS CONTEMPLATED? YES ___ NO X

A. If YES – Parties contemplated to be joined to Arbitration Proceedings.

In the event that during the pendency of the within Cause of Action, I shall become aware of any changes as to any facts stated herein, I shall file an amended certification and serve a copy thereof on all other parties (or their attorneys) who have appeared in said Cause of Action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

FORMAN & CARDONSKY, ESQS.

By: 

SAMUEL TSINMAN, ESQ

DATED: 10-11-17

DEMAND FOR ANSWERS TO INTERROGATORIES

Demand is hereby made on the Defendants to answer fully and responsively Form C and Form C(1) Uniform Interrogatories, Superior Court found in Appendix II as provided by R.4:17-1(b)(ii) and other applicable Rules of Court.

DEMAND FOR DISCOVERY OF INSURANCE CARRIER

Pursuant to R.4:10-2(b), demand is hereby made that Defendants disclose to Plaintiff's attorney, whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment and provide Plaintiff's attorney with true copies of such insurance agreements or policies including, but not limited to, any and all declaration sheets. This demand shall be deemed to include and cover not only primary coverage but also any and all excess catastrophe and umbrella policies.

NOTICE TO PRODUCE

1. Any and all photographs, diagrams, videotapes, x-rays, medical records or test results, relating to this incident and the injuries resulting therefrom;
2. Any and all reports of experts on the issue of liability or damages, whether or not previously provided to parties to this action;
3. Copies of any and all discovery materials, including but not limited to, answers to interrogatories and deposition transcripts of any parties to this action;
4. Any and all documents, papers and writings that you will rely on at the time of trial or which you deem relevant to this action;

5. Any and all reports in your possession regarding any prior litigation concerning defendants' professional liability, including but not limited to reports concerning prior lawsuits and/or claims, and listings of prior insurance claims;
6. Any document or items of physical evidence upon which you intend to rely in cross-examination of any witness;
7. Any and all documents relied upon or reviewed by any expert who has rendered a report;
8. Any and all incident reports and/or written memorandum prepared by the defendant or its agents, servants or employees during the course of its business in any way related to the incident in question.

PLEASE TAKE FURTHER NOTICE that this is a continuing demand and shall apply to all materials, which may come into your possession or under your control up through and including the time of trial.

FORMAN & CARDONSKY, ESQS.

By:


SAMUEL TSINMAN, ESQ.

DATED: 10-11-17